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www.farmwater.org

October 7, 2011

Fethi Benjemaa
Department of Water Resources
901 P Street, Suite 313A
Sacramento, CA 95814

VIA EMAIL

Re: SBX7-7 - Agricultural Water Measurement Regulation

Dear Mr. Benjemaa:

Thank you for the opportunity to comment on the permanent agricultural water measurement regulations the California Water Commission is considering as authorized by SBX7-7 as part of the 2009 package of water bills.

This regulation was developed over the course of more than a year with input from a diverse group of stakeholders including agricultural, environmental and academic members.

USBR Water Conservation Plan Applicability

The language in SBx7-7 requires water suppliers serving 25,000 irrigated acres or more to measure the volume of water delivered to customers. Affected federal water contractors are already required to measure water deliveries and utilize a pricing structure that is at least in part based on the volume delivered. Without adequate clarification these contractors may unnecessarily be required to comply with two sets of regulations: USBR Water Conservation Plan criteria and the SBx7-7 measurement regulation.

The language in SBx7-7 is plain:

Chapter 4. Agricultural Water Suppliers

10608.48. (a) On or before July 31, 2012, an agricultural water supplier shall implement efficient water management practices pursuant to subdivisions (b) and (c).

(b) Agricultural water suppliers shall implement all of the following critical efficient management practices:

(1) Measure the volume of water delivered to customers with sufficient accuracy to comply with subdivision (a) of Section 531.10 (emphasis added) and to implement paragraph (2).

(2) Adopt a pricing structure for water customers based at least in part on quantity delivered.

The bill says to measure water with sufficient accuracy to comply with 531.10 (a):

531.10. (a) An agricultural water supplier shall submit an annual report to the department that summarizes aggregated farm-gate delivery data, on a monthly or bimonthly basis, using best professional practices.

Federal water contractors that are in compliance with federal water conservation criteria are already measuring water deliveries in compliance with 531.10(a).

Mr. Fethi Benjemaa
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Legal certification limiting access to private ditches – 597.3 (b) (2) (A)

Additional changes in the measurement regulation now require "...agricultural water suppliers legal counsel to certify to the Department that it does not have legal access to measure water as a customers delivery points..." This change requires legal certification where the previous version allowed a district to "self certify." If enacted with the new requirement of "legal certification," it will be necessary to engage in a host of title search processes that will be unnecessarily time consuming and very expensive. Self-certification by the elected Board of a water supplier should be sufficient to accommodate questions about access to private property.

To complicate the issue further, the new requirement conflicts with Water Code Section 22234 where the responsibility of engaging with the District for improvements clearly falls on the landowner:

Part 5, Chapter 2, Article 1

Sec. 22234. A district may contract to operate, maintain, or improve ditches and laterals not owned by the district upon petition of at least two-thirds of the owners of land served by such ditches or laterals.

Implementation Schedule – 597.4 (e) (4)

This change in the regulation requires that all measurement devices be brought into compliance within three years of December 2012 instead of within three years of determining that they are out of compliance. This creates a conflict for devices that are found to be out of compliance after the December 2012 deadline. It is also unlikely that districts have accommodated for water measurement device assessments in their 2012 budgets in order to comply with the new water management plan deadline of December 2012. The previous three-year compliance schedule for devices found to be out of compliance more provides a logical method for dealing with devices that are found to be out of compliance after 2012.

Thank you again for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Mike Wade". The signature is fluid and cursive, with the first name "Mike" and last name "Wade" clearly distinguishable.

Mike Wade
Executive Director

cc: CFWC Board of Directors